IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO.3895 OF 2004

Dattatraya S/o. Sakharam Khade ...Applicant

vs.

The State of Maharashtra ...Respondents

Mr.A.P.Mundargi with S.V.Marwadi, for Applicant.

Mr.D.B.More, Addl.P.P. for the State.

CORAM: A.M.Khanwilkar, J.

DATED: 23rd September,2004

P.C.:-

1. Heard Learned Counsel for the parties. The applicant is implicated in the offence punishable under Section 302, 352 & 323 read with 34 of Indian Penal Code, which took place on 11th February,2004.

2. The case of the applicant is that the incident occurred on the spur of moment and it was not pre-planned or premeditated. This submission is advanced on the basis of statement of concerned prosecution witnesses viz. Sanjiv Mane, Ashish Amburkar, Vishwajit Ghule, Jitesh Jadhav and other witnesses. Copies of the statements of each of these witnesses are placed on record. On bare reading of

the statements, there is substance in the submission

canvassed by the applicant, that in so far as the applicant is concerned, at the relevant time he had visited Barber’s shop for shave and at the relevant time the incident happened outside the said shop in which the applicant also joined. The fact remains that the incident has happened on the spur of moment and cannot be said to be premeditated. Besides, the role of the applicant is stated to be of throwing cooler on Jitendra Laxman Jadhav. However, no injury has been sustained by Jitendra Jadhav. Whereas on reading statements of Vithal Dagdu Nanavare, Bharat Dnyanoba Charekar and Nisar Mohd. Habib Ahmed, it is possible to accept the argument that at the relevant time the applicant was sitting in the Barber’s shop and joined the incident subsequently.

3. Taking over all view of the matter, I am inclined to grant bail to the applicant. Learned Additional Public Prosecutor however, press on the fact that the applicant is involved in Thirteen other criminal cases. Indeed this submission was also canvassed before the trial Court, but the trial Court has not rejected the bail application on the basis of

said submission. The counsel for the applicant has placed before me the certified copy of the affidavit

filed before the trial court, which clearly asserts that the applicant is not involved in any offence for last five years and the cases referred to as pending cases in the list provided by the Prosecution is incorrect, in as much as those cases are already disposed of and the applicant has been acquitted. Perhaps it is because of this affidavit which remained uncontroverted, the trial court did not reject the bail application on this objection taken up by Learned Public Prosecutor.

4. Accordingly, the applicant is released on bail in connection with C.R.no.58 of 2004 registered with Deccan Gymkhana Police station on executing personal bond in the sum of Rs.50,000/- and two local sureties in the like amount.

5. The applicant shall not enter the jurisdiction of Deccan Gymkhana Police Station until the conclusion of trial.

6. The applicant shall report to the Kothrud

Police station regularly on every Monday between 10 a.m. to 5 p.m. and also furnish address of his latest place of residence to that police station.

7. The applicant shall not influence the prosecution witness or tamper with the prosecution evidence in any manner whatsoever.

8. The applicant shall regularly attend before the Trial Court and shall give full co-operation for early disposal of the trial.

9. If the trial court is of opinion that the accused is responsible for causing delay in early conclusion of the trial, that can be the ground for cancellation of bail.

23.9.2004 (A.M.Khanwilkar,J)